DOCUMENT RESUME

ED 066 129 HE 003 296

AUTHOR Gehring, Donald D.
TITLE The Law and Student Housing.
INSTITUTION Georgia Univ., Athens. Inst. of Higher Education.
PUB DATE 2 Aug 72
NOTE 11p.; Paper presented at the Association of College and University Housing Officers Conference, Hollywood, Florida August 1-3, 1972

EDRS PRICE MF-$0.65 HC-$3.29
DESCRIPTORS *College Housing; *Court Litigation; Dormitories; *Higher Education; *Legal Problems; *Residence Requirements

ABSTRACT

With the proliferation of cases affecting higher education, it seems necessary to give focus to the law as it pertains to on-campus student housing. The areas of concern in housing are (1) residency requirements and (2) housing regulations with attendant rights of inspection and search to maintain order and discipline. Residency requirements that discriminate against a class of persons solely because that class constitutes the number whose rent is needed to fulfill financial obligations of the institution have been found constitutionally invalid. However, residency requirements based on students increasing their educational experiences as a result of living on campus have been ruled permissible. Housing regulations, like other college regulations, must be in accord with the lawful purposes and missions of the institution. If regulations are compatible with institutional missions and do not deprive students of their constitutional rights, then they have been ruled valid. (HS)

THE LAW and STUDENT HOUSING

ACUHO CONFERENCE
August 2, 1972
Dr. Donald D. Gehring

There are several dates in the history of higher education which mark not only important events but also the beginning of a particular era in the development of our present policies and practicies. In two days we will celebrate the anniversary of one of these dates. On August 4, 1961, slightly more than a decade ago, the 5th U. S. Circuit Court of Appeals granted due process rights to students at tax-supported institutions of higher education.[1] While most student personnel administrators mark this date as the funeral bell for "In loco parentis", I prefer to note it as the beginning of a legalistic era in which a proliferation of cases have been adjudicated. This era is also marked by bombastic students who, never having read a case, espouse legalistic rhetoric in both their speech and their judicial guidelines. Then there is the student personnel administrator charged with the responsibility of dovetailing the affective and cognative development of these students while he is bombarded with a fusillade of legal decisions. As a dean, I know how difficult it is to keep up with current professional literature without delving into the legal arena.

Some of us, I am sure, yearn for the good old days when things were not so complicated. The non-legalistic days, however, are gone and we must amass as much knowledge of the law as we can, both for our sake and the sake of our students.

With the multitude of cases pertaining to almost every aspect of higher education from taxation to torts, I think it is significant that

at this conference we pull back and summarize what the courts have told us concerning a student's relationship to his institution in terms of his on-campus residency. Possibly in this manner we can make some sense out of the myriad of decisions affecting those of us responsible for student housing and at least come to some understanding of the legal parameters within which we operate.

As a former housing director, I think that our concerns can generally be classified into two categories - (1) residency requirements and (2) housing regulations including inspections, searches and seizures. These two essential elements are included in most housing contracts and will be the focus of my remarks today.

PUBLIC-PRIVATE DISTINCTION

Before venturing into these topics, however, I feel that I must draw the distinction between public and private institutions. Public tax-supported institutions of higher education are agencies of the state and therefore, by virtue of the 14th Amendment to the United States Constitution, students at these institutions must be afforded all Constitutional guarantees. As Dawkins and others have asserted, "...a student does not give up any basic constitutional right when he enters a State college or university."[2] Private institutions on the other hand exist in a contractual relationship with their students unless "state action" can be shown. In Green vs. Howard the United States District Court ruled on the issue of contractual theory stating,

> The procedural safeguards and privileges accorded by the Constitution of the United States are confined solely to judicial and

> quasi-judicial proceedings, either in the courts or before administrative agencies. They are directed solely against Governmental action.

Statements in the Howard University catalog were construed by the Court to constitute a contract and thus relieved Howard of affording due process. Howard is a private institution even though it was incorporated by an Act of Congress and receives direct federal support. I shall not in this short period attempt to explain the ramifications of "state action" except to say that it has been difficult in the past to show that a private institution is involved in "state action" by virtue of state grants[4], federal grants[5], or tax exemption[6]. Now, before leaving this cursory treatment of the distinction between public and private institutions, let me give a word of warning to those in attendance who represent private colleges and universities. While in fact, the distinction exists today, several legal authorities, including Dean Yeagge who addressed you last year see this distinction becoming more difficult to justify and unpalatable even if justifiable.[8] Therefore, I would suggest to any of you who represent private institutions and have not yet provided a system of due process to tool up now least you find yourselves in the position of public institutions prior to Dixon.

With the preceeding thoughts in mind, we can now discuss issues relevant to the law and student housing. Of the two areas of concern (1) residency requirements and (2) housing regualtions, let us consider residency requirements first.

RESIDENCY REQUIREMENTS

At least one Court in deciding the issue of residency, and I believe others would rule similarly, made it clear that it would not abide a violation of the constitutional guarantee of equal protection. In Mollere vs. Southeastern Louisiana College[9.] the court ruled unconstitutional a regulation requiring only freshmen men, but all women under 21, to live on campus where the only reason for the regulation was that this particular group comprised the exact number required to fill the halls and thus retire the College's bonded indebtedness. The Court did provide a clue as to what would be acceptable when it stated, "For purposes of this case it might be conceded that a state university may require all or certain categories of students to live on-campus in order to promote the education of those students."[10.] This clue was not unnoticed. In the now famous Pratz case, decided less than a year after Mollere, students at Louisiana Polytechnic Institute challenged that institution's policy requiring all undergraduates to live and eat on-campus.[11.] The College, I believe, well aware of the Mollere decision, supported their regulation on the basis of educational benefit which accrues from residence hall living. The College further stated that if rental income was insufficient to retire the bonds, that such obligations would be borne by all students in the form of increased tuition. In a finding favoring the College, Chief Judge Dawkins stated,

> If sound educational policies, as are shown here, dictate that the educational mission of the State is best carried out by providing for the great majority of student citizens of each State adequate housing and eating

> facilities at a cost which can be afforded by all students seeking entrance into a particular university, then we do not think it is our place to decree otherwise. 12.

The Court also took note of the fact that it seemed natural and justifiable that the College strenuously defended the security feature of its bonds. As you probably know, this decision has been affirmed by the U. S. Supreme Court.

In the most recent case, Poynter vs. Drevdahl[13] a regulation at Northern Michigan University requiring all single undergraduates under 23 years of age to live on-campus was upheld in a summary judgment by the U. S. Court of Appeals. Without relying on Pratz, the Court found the policy valid on the basis that the University had the customary powers of institutions of higher education and the power to construct residence halls and obligate itself for retiring these bonds out of rental income. The Court also took note of the fact that the Michigan Constitution established a policy of encouraging education and the "means" of education. The reasoning of the Court was

> Thus, the purposes enumerated above apply directly to the constitutionally encouraged 'means' of means of education and are valid. Counsel for plaintiff, during oral argument before the court on December 6, conceded that there may be some educational benefit from dormitory living. Need the court therefore go further? Are plaintiffs entitled to a full trial at which they can discount and dispute the claim of educational value of parietal rules and prove that the one genuine motive for the rule is to pay off the debt? If the policy had no relationship whatever to the legitimate ends as stated, and if the sole purpose were to achieve a forbidden end, then further inquiry might be warranted. The court, however, sees nothing sinister in the interest of a state-supported university in insuring its mandatory obligation

> to honor its bonded indebtedness. That, too is a legitimate end. An expensive and time consuming trial devoted to probing the collective conscious or subconscious intent of the governing board, therefore, could not affect the outcome where the purpose in so doing could be only to establish that another legitimate purpose also existed. 14

Notice the legitimacy given by the Court to retiting the bonded indebtedness which sounds so similar to the passing comment in Pratz.

Both Pratz and Poynter should be differentiated from Mollere. In the latter case only freshmen men but all women were required to live on-campus whereas in Pratz and Poynter all undergraduates were included in the regulation. Exemptions of older students from the regulations in both Pratz and Poynter were found to be reasonable by both courts on the basis of maturity and that older students would already have gained benefits from residential living.

HOUSING REGULATIONS

With residency regulations out of the way, let us now turn to housing regulations. There are few cases I know of in this area. One lower court decision in New York is somewhat interesting and humorous. The mother of a Vassar girl claimed that Vassar, which is a private institution, breached its contract when it permitted male visitation in the residence halls. The Court ruled that such a change in social regulations at Vassar was not a breach of an implied contract and that the mere speculation of possible consequences was insufficient for judicial interference.[15]

Probably, the best statement concerning regulations of any type was provided by the United States District Court for the Western District of Missouri. In its General Order on Judicial Standards of

Procedure and Substance in Review of Student Discipline in Tax-Supported Institutions of Higher Education[16] the Court juxtaposed regualtions to institutional missions when it pointed out,

> Standards so established may apply to student behavior on and off the campus when relevant to any lawful mission, process, or function of the institution. By such standards of student conduct the institution may prohibit any action or omission which impairs, interferes with, or obstructs the missions, processes and functions of the institution. Standards so established may require scholastic attainments higher than the average of the population and may require superior ethical and moral behavior. In establishing standards of behavior, the institution is not limited to the standards or the forms of criminal laws. [17]

SEARCH AND SEIZURE

Now the comment might be made, "How much authority do I have to enforce these regulations? It seems as if the courts have, through the years, made it almost impossible." My response to this would be that actually, the courts recognize both the special relationship between a student and his institution as well as the administrator's duty to maintain order and discipline--as long as he does not act arbitrarily or deny anyone their constitutional rights.

This recognition by the courts was emphatically enunciated in Moore vs. Troy State where the United States District Court stated that "college students who reside in dormitories have a special relationship with the college involved."[18] The Court went on to say

> The student is subject only to reasonable rules and regulations, but his rights must yield to the extent that they would not interfere with the institution's fundamental duty to operate the school as an educational institution. A

> reasonable right of inspection is necessary to the institution's performance of that duty, even though it may infringe on the outer bounds of a dormitory students' Fourth Amendment rights. 19.

You see the Fourth Amendment guarantees citizens that they shall be free from unreasonable searches and that warrants will only be issued if there is proable cause. Most courts have interpreted this Amendment to permit college administrators to search residence hall rooms if there is reasonable cause to believe that there is contraban or activity taking place in the room which interferes with the educational mission of the institution. Of course what constitutes reasonable cause would have to be determined by the facts in each case. Reasonable cause, however, is a lower standard than the probable cause required of police seeking information for civil prosecution. This distinction was spelled out in Piazzola vs. Watkins as was the fact that college administrators may not delegate their right of the reasonable standard to civil authorities. 20

Interestingly enough, the plaintiff students in Pratz argued that required living on campus subjected them to this lower standard of "reasonablness", thus violating their right to privacy.[21.] Judge Dawkins, in response to their argument, agreed with the Moore decision quoting the reasonable right of inspection--the paragraph which I quoted to you earlier.

Of course room searches without a warrant are also permissable in the case of an emergency, such as a bomb threat or obnoxious odors.[22.]

The problem with room searches comes when civil authorities are brought into the affair with the purpose of obtaining criminal evidence. In the recent case of Commonwealth vs. McCloskey police, the dean of men, and the resident counselor entered a student's room with a pass

key without knocking or stating their purpose.[23] Once inside, a warrant was served on the student occupant and he was informed of his rights. After finding marijuana, the student was arrested. The court ruled the evidence inadmissable. The court pointed out the difference between Moore and the instant case. In Moore, the evidence was used only to maintain proper discipline in keeping with the lawful mission of the university, whereas in McCloskey, evidence was obtained by civil enforcement personnel for criminal prosecution purposes.

As student personnel worders we have a very rewarding but difficult job. A knowledge of the law, as it relates to higher education, can make that job somewhat easier and provide us with additional information to assist and educate our students.

I hope this presentation has been helpful to you.

NOTES

1
Dixon v. Alabama State Board of Education, 294 F. 2d 150.

2
Pratz v. Louisiana Polytechnic Institute, 316 F. Supp. 872, affirmed 401 U. S. 1004.

3
Green v. Howard University, 271 F. Supp. 609.

4
Powe v. Miles, 294 F. Supp. 1269; 407 F. 2d 73.

5
Grossner v. Trustees of Columbia University in City of New York, 287 F. Supp. 535.

6
Browns v. Mitchell, 409 F. 2d. 593.

7
Robert B. Yegge, unpublished speech at a conference on "Higher Education: The Law and Campus Issues", University of Georgia, Athens, July 6-7, 1972.

8
Fisher, T. C. The Rights and Responsibilities of Students in Private Institutions: The Decline and Fall of an Artificial Distinction. In D. P. Young (Ed.) Higher Education: The Law and Individual Rights and Responsibilities. Athen, Georgia: Institute of Higher Education, 1971. Pp. 27-40.

9
Mollere v. Southeastern Louisiana College, 304 F. Supp. 826.

10
Ibid.

11
Pratz.

12
Ibid.

13
Poynter v. Drevdahl, 4 College Law Bulletin 5-6, Jan.-Feb. 1972.

14
Ibid.

15
Jones v. Vassar, 299 N. Y. S. 2d. 283.

16
45 F. R. D. 133.

17
Ibid.

18
Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725.

19
Ibid.

20
Piazzola v. Watkins, 316 F. Supp. 624, 442 F. 2d. 284.

21
Pratz.

22
People v. Lanthier, 97 Cal. Rptr. 297.

23
Commonwealth v. McClosky, 272 A. 2d. 432.